

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-0178V

UNPUBLISHED

JACOB KOVARSKIY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 13, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
Petitioner.*

Jamica Marie Littles, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 7, 2021, Jacob Kovarskiy filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine administered on February 19, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 13, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On March 13, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$47,500.00 in pain and

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

suffering. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$47,500.00 (for pain and suffering) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JACOB KOVARSKIY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-178V

Chief Special Master Corcoran

ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On January 7, 2021, Jacob Kovarskiy ("petitioner") filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 ("Vaccine Act" or "Act"), as amended. *See* ECF No. 1. Petitioner alleges that he suffered a left Shoulder Injury Related to Vaccine Administration ("SIRVA"), as defined in the Vaccine Injury Table, following administration of a tetanus, diphtheria, and acellular pertussis ("Tdap") vaccine that he received on February 19, 2020. Petition at 1-2. Petitioner alternatively alleges that his 2020 Tdap vaccination caused in fact and/or significantly aggravated his left shoulder injury. *Id.* at 1-2. On March 1, 2023, the Secretary of Health and Human Services ("respondent") filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury. ECF No. 31.

I. Items of Compensation

Pain and Suffering

Based on the evidence of record, respondent proffers that petitioner should be awarded \$47,500.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). This amount represents all

elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹

Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respondent recommends that the Court provide petitioner a lump sum payment of **\$47,500.00**, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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Dated: March 13, 2023

¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.